

IN THE UNITED DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

DAVID BIEBEL,
Plaintiff

vs

KOHL'S DEPARTMENT STORE,
Defendant

ERIE DIVISION
CIVIL ACTION NO. 05-10

CERTIFIED TRANSCRIPT

Deposition of ANNA TURCO, taken before and
by Ann Marie Sullivan, Certified Court Reporter and
Notary Public in and for the Commonwealth of
Pennsylvania, on Thursday, June 16, 2005, commencing
at 2:18 p.m., at the law office of Kevin W. Barron,
Esquire, 821 State Street, Erie, Pennsylvania 16501.

APPEARANCES:

CYNTHIA L. O'DONNELL, ESQUIRE, Tighe, Evan, Schenck &
Paras, Four Gateway Center, 444 Liberty Avenue, Suite
1300, Pittsburgh, Pennsylvania 15222. Attorney for
Defendant, Kohl's Department Store.

KEVIN W. BARRON, ESQUIRE, Law Offices, 821 State
Street, Erie, Pennsylvania 16501. Attorney for
Plaintiff, Davie Biebel.

ANN MARIE SULLIVAN
Court Reporters
4886 Old Sterrettania Road
Erie, Pennsylvania 16506
(814) 836-1542 or FAX#(814) 835-6671

1 Q. On the day that Mr. Biebel fell, do you have any
2 independent recollection of what you were doing that day?

3 A. I'm not exactly sure what I was doing that day.

4 Q. Do you recall, do you have any independent
5 recollection of whether the store was busy that day or not?

6 A. It was business that day, yes.

7 Q. On June 29, 2004?

8 A. Yes it was.

9 Q. How do you recall that it was busy that day?

10 A. A lot of customers were in the store. I just
11 remember it was very busy that day.

12 Q. And do you have any independent recollection of
13 Mr. Biebel falling?

14 A. I went there when he fell.

15 Q. You weren't there when he fell?

16 A. No, I was not in the area.

17 Q. Do you recall, approximately, what time he fell?

18 A. I think it was around 1:20, 1:30.

19 Q. And why do you recall that was the time that he
20 fell?

21 A. Because I looked at my watch when it happened,
22 when they called the Code Blue.

23 Q. You called Code Blue?

24 A. I didn't, Judy did.

25 Q. Judy, who?

1 A. Himes.

2 Q. What's Code Blue?

3 A. Emergency situation in the area.

4 Q. When that happened, you looked at your watch, is
5 that correct?

6 A. Yes.

7 Q. To backtrack a little bit, do you know whether
8 there was anyone that saw Mr. Biebel fall?

9 A. Not to my knowledge, no.

10 Q. After you heard the Code Blue, what did you do?

11 A. I went over to the area to see if I could be of
12 any assistance.

13 Q. When you say the area, what area of the store
14 did you go to?

15 A. Shoe department. When they called Code Blue
16 they announced the area it was in.

17 Q. How long did it take for you to get there after
18 you heard that?

19 A. Not long. I was right around the corner.

20 Q. Seconds then?

21 A. Yes.

22 Q. What did you see when you arrived?

23 A. I saw Mr. Biebel laying on the floor with his
24 clothes on his arm.

25 Q. Clothes on his arm?

1 A. Yes.

2 Q. Do you recall what kind of clothes?

3 A. I believe it was a pair of slacks and a shirt.

4 Q. Do you recall which arm he had them draped over?

5 A. Left arm.

6 Q. And do you recall where he was lying?

7 A. He was lying on the floor in the shoe

8 department.

9 Q. In the shoe department?

10 A. Yes.

11 Q. Did you see anything on the floor near him?

12 A. No.

13 Q. You didn't see the shoe sizer?

14 A. No.

15 Q. When you arrived, did you have any conversations

16 with Mr. Biebel?

17 A. No I didn't.

18 Q. While you were present, Anna, did anyone else

19 have any conversation with Mr. Biebel.

20 A. Judy Himes.

21 Q. What did they say?

22 A. He was trying to get up and Judy told him to lay

23 on the floor. She asked was he okay, and he said he was

24 hurting, he just had knee surgery.

25 Q. Was anyone else present when this conversation

1 took place?

2 A. Dean, the manager of the store came over.

3 Q. First of all, how long were you there before
4 Dean came over?

5 A. A couple of minutes.

6 Q. So Dean arrived several minutes after you were
7 there?

8 A. Just a couple of minutes, yes.

9 Q. Did Dean have any conversations while you were
10 present with Mr. Biebel?

11 A. I don't recall. I don't believe. I stayed
12 there.

13 Q. How long did you stay there, Anna?

14 A. Only a few minutes till Dean came, then I left.

15 Q. Besides what Judy said to Mr. Biebel, do you
16 recall any other conversation Mr. Biebel had with anyone
17 besides Judy while you were there?

18 A. No.

19 Q. Did Mr. Biebel ever tell you, did anyone ask Mr.
20 Biebel how he fell or what caused him to fall?

21 A. I don't recall that.

22 Q. After the fall, did anyone from Kohl's
23 Department Store ever ask you to fill out an incident report
24 or to write down what happened before, immediately before
25 the accident?

1 A. Yes. Dean had asked me to write down what I had
2 seen before.

3 Q. What did you see before?

4 A. Before he fell I saw a family in that area.
5 There was a man and a woman with either two or three
6 children using the show sizer to try on shoes and measure
7 shoes for the children.

8 Q. Do you recall what time this family was in the
9 shoe department doing that?

10 A. They were there about 20 after 1:00.

11 Q. You gave a written statement -- first of all, it
12 appears to be a statement by you. Is that your handwriting,
13 Anna?

14 A. Yes.

15 Q. Is that also your signature?

16 A. Yes.

17 Q. And you indicate in this written statement that
18 on 6/29/04, while stocking shoes I noticed the family using
19 a show sizer around 1:25. A few minutes later a gentleman
20 fell in that area. Is that correct?

21 A. Yes.

22 Q. When you were there you said you never saw the
23 shoe sizer. Is that correct?

24 A. I didn't see it on the floor when he had fallen.

25 Q. Did you see a show sizer anywhere in that area

1 extra traffic or, what?

2 A. The remodel team worked every day and we worked
3 in the different departments. So we could have all been
4 there or one or two of us there.

5 Q. When you saw the family using the show sizer
6 around 1:25, was there anyone from Kohl's attending to them
7 asking if, you know, they needed help or anything?

8 A. No. Our show department is self service.

9 Q. Self service, what do you mean by that?

10 A. It means the customer, you know, measures the
11 feet and look for the shoes and if they need help finding
12 the shoes then they get a customer representative to help
13 them.

14 Q. So there's no one standing around waiting to
15 measure feet or take care of people. Is that correct?

16 A. No, we're just working in the department.

17 Q. You have other job duties to attend besides
18 measuring peoples feet. Is that correct?

19 A. Yes. Stocking shoes, cleaning up around the
20 area.

21 Q. And the self service, that would include using
22 the show sizer. Is that correct?

23 A. Yes.

24 Q. There's no one charged with the duty of making
25 sure that the shoe sizer is placed under a bench or

1 anything. Is that correct?

2 A. Well, the associate in that department would be
3 in charge of that.

4 Q. And because they're not necessarily helping each
5 individual size their feet, that would be when they saw it
6 was out their they're supposed to put it back in. Is that
7 correct?

8 A. Right.

9 Q. How many shoes sizers are there in the
10 department?

11 A. I have no idea.

12 Q. How many have you seen there at one time?

13 A. Probably, two.

14 Q. More maybe?

15 A. That's possible, I don't know how many they
16 have.

17 Q. There's some testimony about a customer possibly
18 being there attending to Mr. Biebel who said she was a
19 nurse. Do you recall any individual like that being present
20 after Mr. Biebel's fall?

21 A. I don't know.

22 Q. You don't know now or you don't recall
23 altogether?

24 A. I don't recall altogether.

25 Q. Have You had any conversations with anyone else,